

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K.
and T.D.

Plaintiff,

v.

THE CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation sole, a/k/a
"MORMON CHURCH"; LDS SOCIAL
SERVICES a/k/a LDS FAMILY SERVICES,
a Utah corporation

Defendant.

NO. 04-2338 RSM

**PROPOSED
ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER, having come on regularly before the above-captioned Court upon motion of defendants COP and LDSFS properly and duly noted pursuant to Fed.R.Civ.P. 56 and CR 7, for an Order on Summary Judgment Dismissing Plaintiffs' Claims for reasons listed in paragraph 1 below, and the Court having considered the records and files herein, including:

1. Defendants' Motion for Summary Judgment regarding (1) plaintiffs' claim based on a failure to report sexual abuse pursuant to RCW 26.44; (2) plaintiff R.K.'s negligence/special relationship claim for lack of duty; (3) plaintiffs' claims for equitable estoppel and fraudulent concealment; (4) plaintiffs' claims for negligent infliction of emotional distress; (5) plaintiff T.D.'s claims for lack of proven damages; (6) plaintiffs' civil conspiracy claims; (7) plaintiffs' John Doe and R.K.'s claims for sexual abuse that occurred before first notice to defendant COP in 1972; (8) plaintiffs' claims for failure to prove proximate cause of damages caused by defendants' conduct; (9) legal rulings on the issue of segregation of damages between intentional tortfeasors and negligent tortfeasors;
2. Defendants' Motion for Summary Judgment on Statute of Limitations Grounds;
3. Declaration of Marcus B. Nash, with exhibits:
 - a. A true and correct copy of selected portions of the transcript of the deposition of plaintiff Robert Kelly taken August 29, 2005.
 - b. A true and correct copy of selected portions of the transcript of the deposition of Dorothy L. Kelly taken March 2, 2005.
 - c. A true and correct copy of selected portions of the transcript of the deposition of plaintiff Todd Denny taken September 7, 2005.
 - d. A true and correct copy of selected portions of the transcript of the deposition of Jon Conte PhD taken October 21, 2005.
 - e. A true and correct copy of selected portions of the transcript of the deposition of plaintiff James Allenbach taken July 20, 2005.
 - f.-1 A true and correct copy of a report prepared by Stuart Greenberg PhD dated September 7, 2005 regarding James Allenbach.
 - f.-2 A true and correct copy of a report prepared by Stuart Greenberg PhD dated September 7, 2005 regarding Kenneth Fleming.
 - g. A true and correct copy of selected portions of the transcript of the deposition of plaintiff Kenneth Fleming taken July 20, 2005.
 - h. A true and correct copy of selected portions of the transcript of the deposition of Richard Pettit taken December 13, 2005.

i. A true and correct copy of selected portions of the transcript of the deposition of Fred Denison taken January 4, 2006.

j. A true and correct copy of the recently filed opinion in Melanie H. v. Defendant Doe, et. al., No. 04-1596 (D. So. Cal. Filed December 21, 2005).

3. Defendants' Proposed Orders Granting their Motions for Summary Judgment of Dismissal;

4. Plaintiffs' memoranda in opposition to defendants' Motions for Summary Judgment, if any;

5. Declarations submitted by plaintiffs in opposition to defendants' Motions for Summary Judgment, if any, and;

6. Plaintiffs' Proposed Orders Denying Defendants' Motions for Summary Judgment of Dismissal

And the court having reviewed the records and files herein; having heard the argument of counsel; and deeming itself fully advised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED, that Defendants' Motions for Summary Judgments shall be, and hereby are, granted, to wit:

1. Any and all of plaintiffs' claims based on a failure to report sexual abuse pursuant to RCW 26.44 are hereby dismissed (the court ruling that RCW 26.44 does not create a private right of action);
2. Plaintiff R.K.'s claims are hereby dismissed (the court finding that Defendants owed R.K. no duty of care under the law);
3. Plaintiffs' claims for equitable estoppel and fraudulent concealment are hereby dismissed (the court finding that there is no basis in law, under the facts and evidence of this case, that support plaintiffs making such a claim);

1 4. Plaintiffs' claims for negligent infliction of emotional distress are hereby
2 dismissed;

3 5. Plaintiff T.D.'s claims are hereby dismissed for lack of proven damages;

4 6. Plaintiffs' civil conspiracy claims are hereby dismissed, there being no clear,
5 cogent, and convincing evidence thereof;

6 7. Plaintiffs' John Doe and R.K.'s claims for sexual abuse that occurred before
7 first notice to defendant COP in 1972 are hereby dismissed for lack of proof of
8 duty or proximate cause;

9 8. All Plaintiffs' claims are hereby dismissed for their failure to prove proximate
10 cause of the damages caused by defendants' conduct; and

11 9. The court hereby rules that, pursuant to *Tegman v. Accident & Medical*
12 *Investigation*, 150 Wn.2d 102, 117, 75 P.3d 497 (2003), the jury will be
13 required to segregate damages attributable to LoHolt as an intentional
14 tortfeasor from any damages attributable to the alleged negligence of any
15 other parties or entities

16 DONE IN OPEN COURT this _____ day of February, 2006.

17
18 _____
19 THE HONORABLE RICARDO S. MARTINEZ

1 Presented by:

2 STAFFORD FREY COOPER

3
4 By: /s/ Marcus B. Nash via ECF
Thomas D. Frey, WSBA #1908
5 Marcus B. Nash, WSBA #14471
6 Attorneys for Defendants

7
8 **Copies received; approved as to form;
Notice of presentation waived:**

9 GORDON, THOMAS, HONEYWELL

10
11 By: _____
Michael T. Pfau, WSBA No 24649

12
13 LAW OFFICES OF TIMOTHY D. KOSNOFF

14
15 By: _____
Timothy D. Kosnoff, WSBA No. 16586

16
17
18
19
20
21
22
23
PROPOSED ORDER GRANTING MOTIONS FOR
SUMMARY JUDGMENT - 5

No. 04-2338 RSM
7566-025226 62023

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100

Seattle WA 98101.1374

TEL 206.623.9900 FAX 206.624.6885

Certificate of Service

I certify that on the date noted below I electronically filed this document entitled PROPOSED ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons, as well as service by hand delivery:

Timothy D. Kosnoff
Law Offices of Timothy D. Kosnoff
600 University Street, Suite 2100
Seattle, WA 98101
Fax: (425) 837-9692

Michael T. Pfau
Gordon Thomas Honeywell Malanca Peterson & Daheim, LLP
600 University Street, Suite 2100
Seattle, WA 98101-4185
Fax: (206) 676-7575

DATED this 6th day of January, 2006, at Seattle, Washington.

/s/Marcus B. Nash via ECF

PROPOSED ORDER GRANTING MOTIONS FOR
SUMMARY JUDGMENT - 6

No. 04-2338 RSM
7566-025226 62023

STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100

Seattle WA 98101.1374

TEL 206.623.9900 FAX 206.624.6885